STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

North Shore Gas Company	)	
	)	
The Peoples Gas Light and Coke Company	)	
	)	
	)	Docket No. 13-0550
Petition Pursuant to Section 8-104 of the Public	)	
Utilities Act to Submit an Energy Efficiency Plan	)	

REPLY BRIEF OF THE CITIZENS UTILITY BOARD AND THE CITY OF CHICAGO

Kristin Munsch
CITIZENS UTILITY BOARD
309 W. Washington St., Ste. 800
Chicago, IL 60606
(312) 263-4282
kmunsch@citizensutilityboard.org

Orijit Ghoshal
THE CITY OF CHICAGO
30 N. LaSalle Street, Suite 900
Chicago, Illinois 60602
(312) 744-6936
orijit.ghoshal@cityofchicago.org

March 4, 2014

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

North Shore Gas Company	)	
	)	
The Peoples Gas Light and Coke Company	)	
	)	
	)	Docket No. 13-0550
Petition Pursuant to Section 8-104 of the Public	)	
Utilities Act to Submit an Energy Efficiency Plan	)	

REPLY BRIEF OF THE CITIZENS UTILITY BOARD AND THE CITY OF CHICAGO

Now comes the Citizens Utility Board ("CUB"), by and through one of its attorneys, and the City of Chicago ("City"), by and through its attorney, Corporation Counsel Stephen R. Patton, to file this Reply Brief pursuant to the Rules of Practice of the Illinois Commerce Commission ("ICC" or "the Commission"), 83 Ill. Admin. Code § 200.800, and the schedule established in this case by the Administrative Law Judge ("ALJ").

I. Introduction

North Shore Gas Company ("NS") and The Peoples Gas Light and Coke Company ("PGL") (together, the "Utilities" or "Companies") submitted their 2014-2017 Energy Efficiency Plan ("Plan") pursuant to Section 8-104 of the Public Utilities Act ("the PUA" or "the Act"). 220 ILCS 5/8-104. The Companies' Plan presents a portfolio of natural gas energy efficiency programs, including programs administered in conjunction with the Illinois Department of Commerce and Economic Opportunity ("DCEO"), designed to achieve the Energy Efficiency Portfolio Standard ("EEPS") statutory energy savings goals within the statutory spending screens.

After the initial round of briefing, CUB-City continue to recommend that the Commission approve the Companies' Plan with CUB-City's recommendations, which would ensure that the Companies will achieve the maximum possible energy efficiency savings under the spending screen. The Commission should also require the Utilities to file a revised Plan incorporating these recommendations.

I. NS-PGL Should Offer Air Sealing to Maximize Energy Savings

In their Initial Brief, the Companies agree that other utilities in Illinois and across the nation, DCEO, and the Weatherization Assistance Program all implement comprehensive Air Sealing programs without requiring radon testing. NS-PGL Init. Br. at 15. The Companies cite no scientific studies that contradict the conclusion of CUB-City witness Mr. Francisco, who concluded that "the available evidence supports neither an exclusion of air sealing measures nor a requirement to test for radon." CUB-City Ex. 4.0 at 3. Moreover, the Companies confirm that they have the ability to implement comprehensive Air Sealing measures and will do so if ordered by the Commission. NS-PGL Init. Br. at 15. The Companies also identify the procedural path by which they could implement a Commission order to include comprehensive Air Sealing measures within their portfolio, including how to implement any required changes to the Companies' modified savings goals. *Id*. at 16.

The Companies' position is supported by the weight of the record evidence, and is an acknowledgement that, when including benefits that are required under the Illinois Total Resource Cost ("TRC") test, the cost-benefit analysis for comprehensive Air Sealing returns a value of 2.11 and 2.46 for the Utilities without radon testing and 1.21 and 1.26 with testing. *Id*. Staff argues that the Commission should give no weight to the Companies' revised TRC analysis since Staff claims that the Companies' new analysis cannot be confirmed or refuted because

Staff alleges the revised analysis "was not available to Staff until the day of the evidentiary hearing." Staff Init. Br. at 32. As a result, Staff posits that the TRC for Air Sealing in PGL territory ranges from 0.71 to 0.95 without radon testing and 0.45 to 0.60 with testing; unadjusted for mitigation costs. *Id.*

Staff's assertion must be disregarded since it lacks any evidentiary foundation in the record, contrary to the Commission's own rules that require any statement of fact to be supported by citation to the record. 83 Ill. Admin. Code 200.800(a). The record contains no such evidence. *See* Staff Init. Br. at 32. As with any proceeding, the Commission is required by the Act to base its findings, decisions, and orders "exclusively on the record for decision." 220 ILCS 5/10-103. Staff's argument that no weight should be given to a revised TRC analysis cannot be relied upon by the Commission because it is based on facts that are not in the record.

Moreover, Staff could have objected to the entry of the data request response at issue at the evidentiary hearing but chose to forfeit that right. Tr. at 15. Staff could have questioned the Companies' witness under whose direction and control the analysis was performed. When asked by the ALJ whether Staff had any cross-examination for that witness, after he had testified to the accuracy of the revised TRC analysis, Staff chose not to cross-examine him. Tr. at 27. Staff cannot now claim that it lacked the ability to examine the revised TRC analysis when it chose not to object to its entry into the evidentiary record and when it chose to waive its ability to cross-examine the very witness responsible for the analysis.

The parties who would bear the risk of over-forecasting alleged benefits from Air Sealing, the Companies, have cited the revised TRC analysis in their briefs and their witness has agreed that Air Sealing is cost effective. NS-PGL Init. Br. at 15-16; Tr. at 26. There is no prejudice imposed on any party due to using the revised TRC analysis. The Commission should

not ignore the most up-to-date analysis of Air Sealing measures due to an unsupported argument by Staff that identifies no prejudice to the Companies who would rely on that analysis.

Even if the Commission were to afford no weight to the data request response containing the revised TRC analysis, the record contains the Companies' conclusion that Air Sealing is a cost-effective energy efficiency measure – both with and without radon testing. Tr. at 26. The Attorney General's Office ("AG") also points to other factors that, if included, would increase the TRC values that Staff believes should be given weight, given that the Companies' assumptions behind those values were flawed and omitted significant benefit streams. *See* AG Init. Br. at 13-14 (citing AG Ex. 1.0 at 24-25). The revised TRC analysis provided by the Companies included a conservative 25% reduction in savings per participant, so that, even if Staff's analysis were to find that some revised benefit streams should be removed or decreased, the likelihood that the comprehensive Air Sealing measures would still pass the TRC test is high. *See* City Cross Ex. 1.0 at Attachments 1, 2 (NS-PGL DRR to COC 1.2).

The Environmental Law and Policy Center ("ELPC") agrees with CUB-City that the Companies should be ordered to include comprehensive Air Sealing measures into their portfolio. ELPC Init. Br. at 9-12. Only as an alternative to failing to order comprehensive Air Sealing measures, both ELPC and the AG argue that the Commission should order the Companies to implement a pilot Air Sealing program to obtain data on the prevalence and levels of radon. ELPC Init. Br. at 12; AG Init. Br. at 14.

However, no pilot program is necessary. Parties advocating for the pilot approach do so only as a fallback option, and even then, only to determine the effect of Air Sealing on radon levels. Given that the record contains no scientific evidence that radon overexposure is: (1) a concern in the NS-PGL service territory; (2) affected by Air Sealing measures; and (3) is made

worse by Air Sealing measures; there is no basis upon which the Commission can or should order a pilot program. The record evidence actually establishes that radon testing "does not provide either the utility or the customer with reliable information." CUB-City Ex. 4.0 at 3-4. The record evidence establishes that a pilot program for Air Sealing would be unlikely to provide reliable evidence of unsupported concerns about radon overexposure. Given that utilities within territories, both within and without Illinois, with higher risk of radon overexposure have implemented comprehensive Air Sealing measures without requiring radon testing, the Commission should order the Companies to revise their portfolio to offer a similar program in the NS-PGL territories.

II. NS-PGL Should Collect Funds from Residential Ratepayers up to the Statutory Spending Screen

NS-PGL reports that, if expanded air sealing measures were included in the portfolio, the Companies expect that "a greater amount of the spending under the Rate Impact Cap for a Plan 2 revised in a compliance filing would move towards residential and multi-family customers." NS-PGL Init. Br. at 16. CUB-City approve of this shift in spending. If NS-PGL expands air sealing and multifamily program offerings per CUB-City's recommendations, NS-PGL would find increased opportunities in those customer sectors than they have previously acknowledged were lacking. As a result, spending on residential and multi-family programs should increase to serve these increased program options.

III. The Commission Should Reject the Adjustable Savings Goal Proposal

In response to CUB-City's concerns, NS-PGL argue that the Utilities would be restricted to only three adjustments during Plan implementation. NS-PGL Init. Br. at 28. The Companies provide no reasoning as to why decreasing their opportunity for adjustments to three avoids the

risk/incentive arguments raised by CUB-City and other parties. In the interest of symmetry, NS-PGL claim that their proposal would also allow for increases in savings goals. *Id.* Although that may be true, the alleged symmetry of risks following adjustments to the savings goal does not address the Companies' behavior following an adjustment that decreases savings goals. In that instance, the Companies fail to explain how they would continue to be motivated to improve measure performance – regardless of the symmetrical chance that savings goals may increase due to adjustments.

The Companies maintain that there is no evidence demonstrating that they will not responsibly manage their portfolio if allowed an adjustable savings goal. *Id.* Of course, the Intervenors cannot provide evidence of utility behavior under a scheme that has not yet existed. It is not, and never has been, the burden of Intervenors to establish the unreasonableness of a proposal that has not been implemented. But that is no reason for the Commission to ignore the explicit statutory penalty scheme enacted by the General Assembly in order to penalize the failure of the Companies to meet "the efficiency standard" contained in the PUA, which is based exclusively on "natural gas savings requirements," not on participation levels or any other measure of energy efficiency performance. 220 ILCS 5/8-104(c), (i).

IV. The Commission Should Reject the Companies' and Staff's Flexibility Proposals and Adopt the AG's Proposal

The Companies incorrectly claim that the Commission has "already rejected the arguments set forth by the AG and CUB-City and approved Staff's recommendations regarding program flexibility" in ICC Docket Number 13-0495. NS-PGL Init. Br. at 26. Instead of rejecting the arguments, the Commission directed the utility in question, Commonwealth Edison Company ("ComEd") to "bring any proposed modification to the SAG for discussion, but

requires that any modifications that require a 20% budget shift be brought to SAG as well as reported to the Commission." ICC Docket No. 13-0495, Order dated January 28, 2014 at 56. This is not a rejection of the arguments but in fact a means to satisfy the concerns of the AG and CUB-City. Moreover, the Commission specifically declined to adopt Staff's proposal that ComEd must receive Commission approval before including cost-ineffective measures in the portfolio. *Id*. at 61. The Commission found that Staff's proposed level of oversight is "not necessary nor is it administratively practical." *Id*.

The Commission should again adopt the flexibility requirements approved in NS-PGL's previous plan docket, ICC Docket Number 10-0564, which are similar to those adopted in ICC Docket Number 13-0495. CUB-City recommends that the Commission require NS-PGL to bring proposed changes to the SAG and to the Commission. CUB-City Ex. 3.0 at 15-16. As it did in ICC Docket Number 10-0564, the Commission should order NS-PGL to discuss with the SAG any program changes or any shift in the budget that results in a 20% or greater change to any program's budget, or that eliminates or adds a program and to receive Commission approval to shift more than 10% of spending between residential and C&I sectors. CUB-City Ex. 3.0 at 15-16; Final Order in ICC Docket No. 10-0564 at 91-92.

V. NS-PGL Should be Required to Receive Feedback on the Potential Studies from the Stakeholder Advisory Group

NS-PGL have agreed to present future potential studies to the SAG because "the SAG provides valuable feedback as to improvements and additional explanations of unclear material." NS-PGL Init. Br. at 39. In doing so, the Companies claim that CUB-City have argued that potential studies must "be submitted to SAG for review and approval." *Id.* This would seem to mean the only objection the Companies had to CUB-City's recommendation was a concern that

the SAG would "approve" the study. *Id*. Given that CUB-City does not, and has not, recommended SAG approval of potential studies, the Companies' new proposal should be adopted by the Commission. This will require NS-PGL to provide the SAG with "an opportunity to submit feedback on the content and analysis to ensure that ratepayer funding spent on these studies actually fulfills their purpose: to provide useful information about energy efficiency potential in the Companies' territories." CUB-City Ex 3.0, 14.

The record shows that these studies are the basis for the Companies' programmatic decisions. NS-PGL Init. Br. at 12, 19. Potential studies evaluate the potential for energy efficiency in a utility's service territory. CUB-City Ex. 3.0 at 12. As a result, these studies should serve as a source of reliable and accurate information for the Commission, the Companies, and Intervenors. However, the record shows that the Companies' latest potential studies failed to provide information that would be useful in trying to make recommendations to improve the Companies' program offerings. The potential studies do not explain how conclusions were reached, nor do they provide comprehensive information about achievable potential, aside from seemingly cherry-picked analyses. CUB-City Ex. 1.0 at 16. Instead of providing the Commission, Staff and Intervenors with comprehensive information about all potential energy efficiency, these studies seem designed to support the program decisions NS-PGL have made in the Plan. *Id*. at 15. For example, there was no information related to air sealing in the potential studies, aside from a note that customers lack motivation to invest in a measure like insulation as opposed to furnaces because furnaces are more of a necessity. Peoples Gas Potential Study at 14. The potential studies lack useful information on programs that could be considered by the Commission – for example, the only mention of multifamily units in the North Shore Gas potential study was a statement that Peoples Gas has more multifamily units as

compared to North Shore Gas. CUB-City Ex. 1.10. Since the potential studies themselves were never circulated to the SAG (CUB-City Ex. 3.0 at 12), the SAG had no opportunity to help prepare better studies, or ensure that when it came to this point – a Commission proceeding – additional information on achievable energy efficiency potential could be placed in the record and used to support decisions directing the Companies to modify their Plan in any particular way. As a result, CUB-City agree with the Companies' proposal to share potential studies with the SAG, and recommend the Commission should require that the SAG has an opportunity to submit feedback on the content and analysis to ensure that ratepayer funding spent on these studies actually fulfills their purpose: to provide useful information about energy efficiency potential in the Companies' territories.

VI. NS-PGL Should Expand Offering for Multifamily Residential Customers

NS-PGL claim that their assumed participation rates used to develop their Multifamily portfolio measures are reasonable because they are based on their past experience, their vendor's experience, and the Companies' potential studies. NS-PGL Init. Br. at 19. However, the Companies have failed to include adequate air sealing measures as part of their programs, including in the multifamily sector. CUB-City Ex. 1.0 at 12-22. Without previous experience implementing programs that include comprehensive air sealing measures, NS-PGL is not in a position to speak about assumed participation rates. Further, the record demonstrates that the potential studies do not provide useful or reliable information. Nevertheless, the Companies state that if ordered to implement a comprehensive Air Sealing program, NS-PGL would likely allocate additional funding to those measures which would presumably increase participation levels. NS-PGL Init. Br. at 20-21. The Utilities claim that CNT Energy will be one of the Utilities' vendors implementing its measures for multi-family dwellings and that the Companies

will adopt many of CNT's best practices. *Id.* CUB-City agree with the Companies that, if ordered to implement comprehensive Air Sealing measures, the Companies' Multifamily offerings that are designed based on CNT's best practices would sufficiently serve the Multifamily class.

VII. Conclusion

The Commission should approve the Companies' Plan with CUB-City's recommendations provided above and in their Initial Brief.

Dated: March 4, 2014

Respectfully submitted,

Kristin Munsch
Director of Policy and Senior Attorney
CITIZENS UTILITY BOARD
309 W. Washington, Suite 800
Chicago, IL 60606
(312) 263-4282
(312) 263-4329 fax
kmunsch@citizensutilityboard.org

Orijit K. Ghoshal
Assistant Corporation Counsel
City of Chicago, Department of Law
30 North LaSalle Street
Suite 1400
Chicago, IL 60602
(312) 744-6936
orijit.ghoshal@cityofchicago.org